

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

NANCY ANN MCKAY

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:10-cv-463-HSO-JMR

**COMMISSIONER
OF SOCIAL SECURITY**

DEFENDANT

**ORDER ADOPTING REPORT AND RECOMMENDATIONS, AND
DISMISSING PLAINTIFF'S COMPLAINT WITHOUT PREJUDICE**

This matter is before the Court on Chief Magistrate Judge John M. Roper's Report and Recommendations [15]. Magistrate Judge Roper recommended that this case be dismissed without prejudice for Plaintiff's failure to prosecute. Report and Recommendations, at p. 2. Plaintiff was served with the Report and Recommendations [15] on October 16, 2012, and the Report and Recommendations [15] were received on October 27, 2012. Acknowledgment [16], at p. 1. To date, Plaintiff has not filed any objection to the Report and Recommendations [15].

I. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, the Court need not conduct a *de novo* review of it. 28 U.S.C. § 636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Plaintiff filed her Complaint [1] on September 22, 2010. The Court entered

an Order [2] on September 22, 2010, instructing Plaintiff that “[w]ithin 30 days from the filing of the defendant’s answer, the plaintiff shall serve and file an appropriate dispositive motion seeking reversal or remand of the Secretary’s decision and a brief setting forth all errors and legal authorities which plaintiff contends entitle [her] to relief.” Order [2], at p. 1. After Magistrate Judge Roper entered two separate Orders to Show Cause [6], [8], due to lack of proper service upon Defendant, Plaintiff finally effected proper service of process upon Defendant on or about January 11, 2012.

Defendant filed his Answer [13] on April 3, 2012, along with the Administrative Record [14]. Pursuant to the Court’s Order [2] entered on September 22, 2010, Plaintiff should have filed a dispositive motion on or before May 3, 2012. To date, over 190 days after Defendant’s Answer was filed, Plaintiff has not filed a dispositive motion. On October 4, 2012, Magistrate Judge Roper entered a Text Order requiring Plaintiff to show cause why this action should not be dismissed for failure to comply with the Court’s Order [2]. Plaintiff was advised that should she “fail to comply with this Order, this action may be dismissed.” Oct. 4, 2012, Text Order. To date, Plaintiff has not filed any response to the Order to Show Cause.

Plaintiff has not filed any documents in this case since the Summons were returned executed on February 3, 2012, and she has failed to respond to the Court’s Orders since that time. After review of the record, the Court, being fully advised in the premises, finds that the Report and Recommendations [15] properly find that

Plaintiff has demonstrated a lack of interest in prosecuting this case. The Report and Recommendations [15] are neither clearly erroneous nor contrary to law, and this case should be dismissed for failure to prosecute.

II. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendations [15] of Chief Magistrate Judge John M. Roper entered on October 16, 2012, should be, and hereby are, adopted as the findings of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, this civil action is hereby **DISMISSED WITHOUT PREJUDICE**. A separate judgment will be entered in accordance with this Order as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 16th day of November, 2012.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE